

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 13, 2010

**SENATE BILL**

**No. 955**

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**Introduced by Senator Huff**

February 4, 2010

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An act to amend Sections 1294, 1296, 44929.21, 44936, 44944, 44945, 44955, and 44956 of, to add Section 44955.1 to, and to repeal Section 44949 of, the Education Code, relating to school districts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 955, as amended, Huff. School districts.

(1) Existing law provides that, after a certificated employee of a school district *or a county superintendent of schools* with an average daily attendance of 250 or more completes 2 consecutive years of *employment* and is reelected for the next succeeding school year to a position requiring certification, the employee becomes and is classified as a permanent employee of the school district *or county superintendent*. Existing law additionally requires the governing board of a school district *or county superintendent* to notify the employee on or before March 15 of the employee's 2nd year of probation of the ~~governing board's~~ decision ~~whether~~ *of the governing board or school district* to reelect or not reelect the employee for the next succeeding school year to the position.

This bill would ~~change the notification deadline from March 15 to June 15~~ *instead require the governing board and county superintendent of schools to notify the employee of its decision to reelect or not reelect the employee on or after May 1 but no later than 30 days before the*

*last schoolday scheduled on the school calendar of the employee's 2nd year of probation.*

(2) Existing law establishes certain procedures with which the governing board of a school district is required to comply before dismissing or suspending a permanent employee, including, at the employee's option, a hearing. Existing law establishes a commission of professional competence for each hearing, consisting of specified members. Existing law deems the decision of the commission on professional competence to be the final decision of the governing board.

Existing law prohibits a notice of dismissal or suspension initiated pursuant to these provisions from being given between May 15 and September 15, inclusive, in any year.

This bill would delete that prohibition. The bill would make various changes to the provisions relating to the hearing, including authorizing the commission of professional competence to consist solely of an administrative law judge, as well as providing that the decision of the commission would be advisory, and the final decision regarding the discipline of the employee would be determined by action of the governing board. The bill would provide that an employee requesting a hearing ~~would be deemed terminated but would be entitled to reasonable back wages and benefits placed on administrative leave without pay, unless the employee furnishes to the school district acceptable security, as specified, in which case the employee would be continued to be paid his or her regular salary.~~

Existing law authorizes the decision of a commission on professional competence to be reviewed by a court of competent jurisdiction on petition of either the governing board or the employee.

This bill would instead authorize the decision to be reviewed on petition of the employee.

(3) Existing law requires, when a reduction in the number of certificated employees employed by a school district is authorized for specified reasons, the notice of the termination of the services of an employee in the subsequent school year be given by the governing board to the employee, in a prescribed manner, before May 15. Existing law requires the superintendent of the district, prior to March 15 and before an employee is given the described notice, to give written notice to the governing board and the employee that it has been recommended that the notice be given to the employee, and stating the reasons therefor. Existing law authorizes an employee who is given this notice to request

a hearing to determine if there is cause for not reemploying him or her for the ensuing year.

This bill would eliminate this notice requirement and the authority of an employee to request a hearing.

Existing law provides that when employees are terminated pursuant to a reduction in workforce, that a school district is required to terminate the employees in order of seniority. Existing law provides certain exceptions to this rule.

This bill would provide additional exceptions, including authorizing school districts to terminate employees on the basis of performance evaluations, as specified, and on the basis that the employee is assigned to a schoolsite that has been selected by the governing board from certificated reductions in force, based upon the needs of the educational program.

(4) Existing law generally requires school districts to adhere to certain requirements with respect to teacher and administrator employment. Existing law requires a charter school petition to set forth specified information in its charter relating to employment, including the qualifications to be met by individuals to be employed at the school.

This bill would authorize school districts, county offices of education, and charter schools to assign, reassign, and transfer teachers and administrators based on effectiveness and subject matter needs, and without regard to years of service.

(5) Existing law provides certain rights for permanent school employees who have been terminated pursuant to specified provisions of law, including the right to be offered prior opportunity for substitute service during the absence of any other employee who has been granted a leave of absence or who is temporarily absent from duty, as specified.

This bill, notwithstanding these provisions, would authorize a school district to deviate from reappointing a certificated employee in order of seniority for specified reasons. *The bill would revise the compensation requirements for employees who serve as substitute teachers in a position requiring certification qualifications for 21 days or more within a period of 60 schooldays by requiring a school district to compensate the employee at a rate no less than the amount the employee would have received if he or she were being reappointed beginning on the 22nd day during that 60-day period instead of the first day of that service.*

*The bill would make the bill's provisions applicable to county superintendent of schools, and would delete obsolete provisions relating to employees who were on probation prior to 1984.*

(6) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1294 of the Education Code is amended*  
2     *to read:*

3     1294. Each person employed by a county superintendent of  
4     schools in a position requiring certification qualifications, except  
5     employees included in the civil service system or in any merit  
6     system, or any person who holds an office by virtue of an election  
7     conducted under the Elections Code or the Education Code, and  
8     whose salary is paid from the county school service fund, has the  
9     same right with respect to leaves of absence, sick leave, and  
10    bereavement leave as a person employed by a school district or a  
11    community college district in a position requiring certification  
12    qualifications.

13    Sections 22724, 44845, 44922, ~~44949~~, 44929.21, 44936, 44944,  
14    ~~44945~~, 44955, ~~44955.1~~, 44956, 44962 to 44976, inclusive, 44977,  
15    44978, 44979, 44983, 44984, 44985, 44987, 87413, 87414, 87740,  
16    87743, 87763 to 87779, inclusive, 87780, 87781, 87782, 87786,  
17    87787, and 87788 apply to persons so employed by a county  
18    superintendent of schools and so paid from the county school  
19    service fund. Whenever, in those provisions, a duty or power is  
20    imposed upon or granted to the governing board of a school district  
21    or community college district or an employee thereof, the power  
22    or duty shall, for the purposes of this section, be deemed to be  
23    granted to or imposed on the county superintendent of schools or  
24    his or her employee, respectively. When "district" is used in those  
25    provisions, it shall, for the purposes of this section, be deemed to  
26    mean "county superintendent of schools." Compensation paid to  
27    employees during those leaves shall be paid from the county school  
28    service fund.

1 The granting of leaves of absence to employees pursuant to  
2 Section 44966 or 87767 shall be by the county superintendent of  
3 schools, upon approval by the county board of education.

4 *SEC. 2. Section 1296 of the Education Code is amended to*  
5 *read:*

6 ~~1296. (a) If the average daily attendance of the schools and~~  
7 ~~classes maintained by a county superintendent of schools is 250~~  
8 ~~or more, each person who, after being employed for three complete~~  
9 ~~consecutive school years by the superintendent in a teaching~~  
10 ~~position in those schools or classes requiring certification~~  
11 ~~qualifications and whose salary is paid from the county school~~  
12 ~~service fund, is reelected for the next succeeding school year to~~  
13 ~~such a position in those schools or classes, shall be classified as~~  
14 ~~and become a permanent employee of the county superintendent~~  
15 ~~of schools.~~

16 ~~Such an employee shall have the same rights and duties as~~  
17 ~~employees of school districts to which Section 44882 applies.~~  
18 ~~Sections 44841, 44842, 44882, 44948.3, and 44948.5 are applicable~~  
19 ~~to these employees.~~

20 ~~This subdivision shall apply only to probationary employees~~  
21 ~~whose probationary period commenced prior to the 1983–84 fiscal~~  
22 ~~year.~~

23 ~~(b)~~  
24 ~~1296. (a) If the average daily attendance of the schools and~~  
25 ~~classes maintained by a county superintendent of schools is 250~~  
26 ~~or more, each person who, after being employed for two complete~~  
27 ~~consecutive school years by the superintendent in a teaching~~  
28 ~~position in those schools or classes requiring certification~~  
29 ~~qualifications and whose salary is paid from the county school~~  
30 ~~service fund, is reelected for the next succeeding school year to~~  
31 ~~such a *certificated* position in those schools or classes, shall be~~  
32 ~~classified as and become a permanent employee of the county~~  
33 ~~superintendent of schools.~~

34 ~~The~~  
35 ~~(b) The county superintendent of schools shall notify the~~  
36 ~~employee, on or before March 15 after May 1, but no later than~~  
37 ~~30 days before the last schoolday scheduled on the school calendar~~  
38 ~~of the employee's second complete consecutive year of~~  
39 ~~employment by the superintendent in a teaching position in schools~~  
40 ~~or classes maintained by the superintendent requiring certification~~

1 qualifications, of the decision to reelect or not reelect the employee  
2 for the next succeeding school year to ~~such a~~ *the* position in those  
3 schools. ~~In the event that~~ *If* the county superintendent does not  
4 give notice pursuant to this section on or before March 15 to the  
5 employee within that time period, the employee shall be deemed  
6 reelected for the next succeeding school year.

7 ~~Such an~~  
8 year. The employee shall have the same rights and duties as  
9 employees of school districts to which Section 44882 applies.  
10 Sections 44841, 44842, 44882, 44948.3, and 44948.5 are applicable  
11 to these employees.

12 ~~This subdivision shall apply only to probationary employees~~  
13 ~~whose probationary period commenced during the 1983–84 fiscal~~  
14 ~~year or any fiscal year thereafter.~~

15 (c) As used in this section, “teaching position” means any  
16 certificated position designated as of January 1, 1983, by the county  
17 board of education or the county superintendent of schools as a  
18 teaching position for the purpose of granting probationary or  
19 permanent status.

20 **SECTION 1.**

21 *SEC. 3.* Section 44929.21 of the Education Code is amended  
22 to read:

23 ~~44929.21. (a) Every employee of a school district of any type~~  
24 ~~or class having an average daily attendance of 250 or more who,~~  
25 ~~after having been employed by the district for three complete~~  
26 ~~consecutive school years in a position or positions requiring~~  
27 ~~certification qualifications, is reelected for the next succeeding~~  
28 ~~school year to a position requiring certification qualifications shall,~~  
29 ~~at the commencement of the succeeding school year be classified~~  
30 ~~as and become a permanent employee of the district.~~

31 ~~This subdivision shall apply only to probationary employees~~  
32 ~~whose probationary period commenced prior to the 1983–84 fiscal~~  
33 ~~year.~~

34 ~~(b)–~~  
35 *44929.21. (a)* Every employee of a school district of any type  
36 or class having an average daily attendance of 250 or more who,  
37 after having been employed by the district for two complete  
38 consecutive school years in a position or positions requiring  
39 certification qualifications, is reelected for the next succeeding  
40 school year to a position requiring certification qualifications shall,

1 at the commencement of the succeeding school year be classified  
2 as and become a permanent employee of the district.

3 ~~The~~

4 (b) ~~The governing board shall notify the employee, on or before~~  
5 ~~June 15 or after May 1, but no later than 30 days before the last~~  
6 ~~school day scheduled on the school calendar of the employee's~~  
7 ~~second complete consecutive school year of employment by the~~  
8 ~~district in a position or positions requiring certification~~  
9 ~~qualifications, of the decision to reelect or not reelect the employee~~  
10 ~~for the next succeeding school year to the position. In the event~~  
11 ~~that the governing board does not give notice pursuant to this~~  
12 ~~section on or before June 15 to the employee within that time~~  
13 ~~period, the employee shall be deemed reelected for the next~~  
14 ~~succeeding school year.~~

15 ~~This subdivision shall apply only to probationary employees~~  
16 ~~whose probationary period commenced during the 1983-84 fiscal~~  
17 ~~year or any fiscal year thereafter.~~

18 ~~SEC. 2.~~

19 SEC. 4. Section 44936 of the Education Code is amended to  
20 read:

21 44936. The notice of dismissal or suspension in a proceeding  
22 initiated pursuant to Section 44934 shall be in writing and be served  
23 upon the employee personally or by United States registered mail  
24 addressed to him at his last known address. A copy of the charges  
25 filed, containing the information required by Section 11503 of the  
26 Government Code, together with a copy of the provisions of this  
27 article, shall be attached to the notice.

28 ~~SEC. 3.~~

29 SEC. 5. Section 44944 of the Education Code is amended to  
30 read:

31 44944. (a) (1) In a dismissal or suspension proceeding initiated  
32 pursuant to Section 44934, if a hearing is requested by the  
33 employee, the hearing shall be commenced within 60 days from  
34 the date of the employee's demand for a hearing. The hearing shall  
35 be initiated, conducted, and a decision made in accordance with  
36 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
37 3 of Title 2 of the Government Code. However, the hearing date  
38 shall be established after consultation with the employee and the  
39 governing board, or their representatives, and the Commission on  
40 Professional Competence shall have all of the power granted to

1 an agency in that chapter, except that the right of discovery of the  
2 parties shall not be limited to those matters set forth in Section  
3 11507.6 of the Government Code but shall include the rights and  
4 duties of any party in a civil action brought in a superior court  
5 under Title 4 (commencing with Section 2016.010) of Part 4 of  
6 the Code of Civil Procedure. Notwithstanding any provision to the  
7 contrary, and except for the taking of oral depositions, no discovery  
8 shall occur later than 30 calendar days after the employee is served  
9 with a copy of the accusation pursuant to Section 11505 of the  
10 Government Code. In all cases, discovery shall be completed prior  
11 to seven calendar days before the date upon which the hearing  
12 commences. If a continuance is granted pursuant to Section 11524  
13 of the Government Code, the time limitation for commencement  
14 of the hearing as provided in this subdivision shall be extended  
15 for a period of time equal to the continuance. However, the  
16 extension shall not include that period of time attributable to an  
17 unlawful refusal by either party to allow the discovery provided  
18 for in this section.

19 (2) If the right of discovery granted under paragraph (1) is  
20 denied by either the employee or the governing board, all of the  
21 remedies in Chapter 7 (commencing with Section 2023.010) of  
22 Title 4 of Part 4 of the Code of Civil Procedure shall be available  
23 to the party seeking discovery, and the court of proper jurisdiction  
24 to entertain his or her motion shall be the superior court of the  
25 county in which the hearing will be held.

26 (3) The time periods in this section and of Chapter 5  
27 (commencing with Section 11500) of Part 1 of Division 3 of Title  
28 2 of the Government Code and of Title 4 (commencing with  
29 Section 2016.010) of Part 4 of the Code of Civil Procedure shall  
30 not be applied so as to deny discovery in a hearing conducted  
31 pursuant to this section.

32 (4) The superior court of the county in which the hearing will  
33 be held may, upon motion of the party seeking discovery, suspend  
34 the hearing so as to comply with the requirement of the preceding  
35 paragraph.

36 (5) No witness shall be permitted to testify at the hearing except  
37 upon oath or affirmation.

38 (b) The hearing provided for in this section shall be conducted  
39 by a Commission on Professional Competence. The commission

1 shall be established through one of the following two methods, as  
2 selected by the governing board:

3 (1) One member of the commission shall be selected by the  
4 employee, one member shall be selected by the governing board,  
5 and one member shall be an administrative law judge of the Office  
6 of Administrative Hearings who shall be chairperson and a voting  
7 member of the commission and shall be responsible for ensuring  
8 that the legal rights of the parties are protected at the hearing. The  
9 member selected by the governing board and the member selected  
10 by the employee shall not be related to the employee, shall not be  
11 employees of the district initiating the dismissal or suspension,  
12 and shall hold a currently valid credential and have at least five  
13 years' teaching or administrative experience. If either the governing  
14 board or the employee for any reason fails to select a commission  
15 member at least seven calendar days prior to the date of the hearing,  
16 the failure shall constitute a waiver of the right to selection, and  
17 the county board of education or its specific designee shall  
18 immediately make the selection. If the county board of education  
19 is also the governing board of the school district or has by statute  
20 been granted the powers of a governing board, the selection shall  
21 be made by the Superintendent, who shall be reimbursed by the  
22 school district for all costs incident to the selection.

23 (2) The commission shall consist solely of an administrative  
24 law judge of the Office of Administrative Hearings who shall be  
25 responsible for ensuring that the legal rights of the parties are  
26 protected at the hearing.

27 (c) (1) The commission shall prepare a written decision  
28 containing findings of fact, determinations of issues, and a  
29 disposition that shall be, solely, one of the following:

30 (A) That the employee should be dismissed.

31 (B) That the employee should be suspended for a specific period  
32 of time without pay.

33 (C) That the employee should not be dismissed or suspended.

34 (2) The decision of the commission that the employee should  
35 not be dismissed or suspended shall not be based on nonsubstantive  
36 procedural errors committed by the school district or governing  
37 board unless the errors are prejudicial errors.

38 (3) The commission shall not have the power to dispose of the  
39 charge of dismissal by imposing probation or other alternative  
40 sanctions. The imposition of suspension pursuant to subparagraph

1 (B) of paragraph (1) shall be available only in a suspension  
2 proceeding authorized pursuant to subdivision (b) of Section 44932  
3 or Section 44933.

4 (4) The decision of the commission shall be advisory, and the  
5 final decision regarding the discipline of the employee shall be  
6 determined by action of the governing board of the school district.

7 (5) The board may adopt from time to time rules and procedures  
8 not inconsistent with this section as may be necessary to effectuate  
9 this section.

10 (6) The governing board and the employee shall have the right  
11 to be represented by counsel.

12 (d) (1) If the commission has been established pursuant to  
13 paragraph (1) of subdivision (b), and the member selected by the  
14 governing board or the member selected by the employee is  
15 employed by any school district in this state, the member shall,  
16 during any service on the commission, continue to receive salary,  
17 fringe benefits, accumulated sick leave, and other leaves and  
18 benefits from the district in which the member is employed, but  
19 shall receive no additional compensation or honorariums for service  
20 on the commission.

21 (2) If the commission has been established pursuant to paragraph  
22 (1) of subdivision (b), and service on the commission occurs during  
23 summer recess or vacation periods, the member shall receive  
24 compensation proportionate to that received during the current or  
25 immediately preceding contract period from the member's  
26 employing district, whichever amount is greater.

27 (e) (1) If the governing board determines that the employee  
28 should be dismissed or suspended, the governing board and the  
29 employee shall share equally the expenses of the hearing, including  
30 the cost of the administrative law judge. If the commission has  
31 been established pursuant to paragraph (1) of subdivision (b), the  
32 state shall pay any costs incurred under paragraph (2) of  
33 subdivision (d), the reasonable expenses, as determined by the  
34 administrative law judge, of the member selected by the governing  
35 board and the member selected by the employee, including, but  
36 not limited to, payments or obligations incurred for travel, meals,  
37 and lodging, and the cost of the substitute or substitutes, if any,  
38 for the member selected by the governing board and the member  
39 selected by the employee. The Controller shall pay all claims  
40 submitted pursuant to this paragraph from the General Fund, and

1 may prescribe reasonable rules, regulations, and forms for the  
2 submission of the claims. The employee and the governing board  
3 shall pay their own attorney's fees.

4 (2) If the governing board determines that the employee should  
5 not be dismissed or suspended, the governing board shall pay the  
6 expenses of the hearing, including the cost of the administrative  
7 law judge, any costs incurred under paragraph (2) of subdivision  
8 (d), the reasonable expenses, as determined by the administrative  
9 law judge, of the member selected by the governing board and the  
10 member selected by the employee, including, but not limited to,  
11 payments or obligations incurred for travel, meals, and lodging,  
12 the cost of the substitute or substitutes, if any, for the member  
13 selected by the governing board and the member selected by the  
14 employee, and reasonable attorney's fees incurred by the employee.

15 (3) As used in this section, "reasonable expenses" shall not be  
16 deemed "compensation" within the meaning of subdivision (d).

17 (4) ~~If either the governing board or the employee petitions a~~  
18 court of competent jurisdiction for review of the decision of the  
19 commission, the payment of expenses to the administrative law  
20 judge required by this subdivision shall not be stayed.

21 (5) (A) If the commission has been established pursuant to  
22 paragraph (1) of subdivision (b), and the decision of the governing  
23 board is finally reversed or vacated by a court of competent  
24 jurisdiction, either the state, having paid the commission members'  
25 expenses, shall be entitled to reimbursement from the governing  
26 board for those expenses, or the governing board, having paid the  
27 expenses, shall be entitled to reimbursement from the state.

28 (B) Either the employee, having paid a portion of the expenses  
29 of the hearing, including the cost of the administrative law judge,  
30 shall be entitled to reimbursement from the governing board for  
31 the expenses, or the governing board, having paid its portion and  
32 the employee's portion of the expenses of the hearing, including  
33 the cost of the administrative law judge, shall be entitled to  
34 reimbursement from the employee for that portion of the expenses.

35 (f) The hearing provided for in this section shall be conducted  
36 in a place selected by agreement among the members of the  
37 commission. If the commission has been established pursuant to  
38 paragraph (1) of subdivision (b), in the absence of agreement, the  
39 place shall be selected by the administrative law judge.

~~(g) An employee requesting a hearing pursuant to this section shall be deemed terminated by the initiating district as of the time the governing board votes to approve an agenda item to dismiss the employee. However, if the employee prevails at the hearing,~~

*(g) (1) For the duration of the hearing conducted pursuant to this section, the employee shall be placed on administrative leave without pay, unless the employee furnishes to the school district a suitable bond or other security acceptable to the governing board, as specified in paragraph (2).*

*(2) An employee placed on administrative leave pursuant to this section shall continue to be paid his or her regular salary during the period of his or her administrative leave of absence if during that time he or she furnishes to the school district a suitable bond or other security acceptable to the governing board, as a guarantee that the school district will be repaid the amount of salary during the employee's leave of absence if, by action of the governing board, a final decision is made to terminate the employee, or the employee fails or refuses to return to service following a decision not to terminate the employee. If the governing board determines that the employee should not be dismissed, the governing board shall reimburse the employee for the cost of the bond upon his or her return to service in the school district.*

*(3) If the employee prevails at the hearing, the administrative law judge may recommend a suitable compensatory remedy, including back wages and benefits, which the governing board may adopt if the employee is reinstated. Any employee who is reinstated pursuant to this section, either by the governing board or by order of a court of competent jurisdiction, is entitled to reasonable back wages and benefits.*

~~SEC. 4.~~

*SEC. 6.* Section 44945 of the Education Code is amended to read:

*44945. The decision of the governing board may, on petition of the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by a hearing officer under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgment on the evidence. The proceeding shall be set for hearing at the earliest possible date and shall take*

precedence over all other cases, except older matters of the same character and matters to which special precedence is given by law.

~~SEC. 5.~~

*SEC. 7.* Section 44949 of the Education Code is repealed.

~~SEC. 6.~~

*SEC. 8.* Section 44955 of the Education Code is amended to read:

44955. (a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Section 44948.

(b) (1) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session has declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it has become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of a permanent employee shall not be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which the permanent employee is certificated and competent to render.

(2) In computing a decline in average daily attendance for purposes of this section for a newly formed or reorganized school district, each school of the district shall be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years.

(3) As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the pupils thereof, including distinctions based upon performance evaluations. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing within 30 days of the request, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of termination of services shall be given before the 15th of May, and services of those employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for any of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

(3) On the basis of performance evaluations, if pursuant to a process whereby employees with superior evaluations are retained over those with inferior evaluations. The governing board may exercise its discretion in developing such a process, which shall be applied uniformly to the entire class that is subject to the reduction in force.

(4) On the basis that the employee is assigned to a schoolsite that has been selected by the governing board for exemption from

1 certificated reductions in force, based upon the needs of the  
2 educational program.

3 ~~SEC. 7.~~

4 *SEC. 9.* Section 44955.1 is added to the Education Code, to  
5 read:

6 44955.1. Notwithstanding any other law, a school district,  
7 county office of education, or charter school may assign, reassign,  
8 and transfer teachers and administrators based on effectiveness  
9 and subject matter needs without regard to years of service.

10 ~~SEC. 8.~~

11 *SEC. 10.* Section 44956 of the Education Code is amended to  
12 read:

13 44956. A permanent employee whose services have been  
14 terminated as provided in Section 44955 shall have the following  
15 rights:

16 (a) For the period of 39 months from the date of the termination,  
17 an employee who in the meantime has not attained the age of 65  
18 years shall have the preferred right to reappointment, in the order  
19 of original employment as determined by the board in accordance  
20 with the provisions of Sections 44831 to 44855, inclusive, if the  
21 number of employees is increased or the discontinued service is  
22 reestablished, with no requirements that were not imposed upon  
23 other employees who continued in service; provided, that a  
24 probationary or other employee with less seniority shall not be  
25 employed to render a service which said employee is certificated  
26 and competent to render. However, before reappointing an  
27 employee to teach a subject which he or she has not previously  
28 taught, and for which he or she does not have a teaching credential  
29 or which is not within the employee's major area of postsecondary  
30 study or the equivalent thereof, the governing board shall require  
31 the employee to pass a subject matter competency test in the  
32 appropriate subject.

33 (b) This right to reappointment may be waived by the employee,  
34 without prejudice, for not more than one school year, unless the  
35 board extends this right, but the waiver shall not deprive the  
36 employee of his or her right to subsequent offers of reappointment.

37 (c) Notwithstanding subdivision (a), a school district may  
38 deviate from the order of seniority in reappointing a certificated  
39 employee for either of the following reasons:

1 (1) The district demonstrates a specific need for personnel to  
2 teach a specific course or course of study, or to provide services  
3 authorized by a services credential with a specialization in either  
4 pupil personnel services or health for a school nurse, and that the  
5 employee has special training and experience necessary to teach  
6 that course or course of study, or to provide those services, which  
7 others with more seniority do not possess.

8 (2) For purposes of maintaining or achieving compliance with  
9 constitutional requirements related to equal protection of the laws.

10 (d) For an employee who is reappointed, the period of his or  
11 her absence shall be treated as a leave of absence and shall not be  
12 considered as a break in the continuity of his or her service, he or  
13 she shall retain the classification and order of employment he or  
14 she had when his or her services were terminated, and credit for  
15 prior service under any state or district retirement system shall not  
16 be affected by the termination, but the period of his or her absence  
17 shall not count as a part of the service required for retirement.

18 (e) During the period of his or her preferred right to  
19 reappointment, an employee, in the order of original employment,  
20 shall be offered prior opportunity for substitute service during the  
21 absence of any other employee who has been granted a leave of  
22 absence or who is temporarily absent from duty. However, his or  
23 her services may be terminated upon the return to duty of the other  
24 employee and the substitute service shall not affect the retention  
25 of his or her previous classification and rights. *If, in any school*  
26 *year the employee serves as a substitute teacher in any position*  
27 *requiring certification qualifications for 21 days or more within*  
28 *a period of 60 schooldays, the compensation the employee receives*  
29 *for that 60 days, beginning on the 22nd day, shall be not less than*  
30 *the amount the employee would have received if he or she were*  
31 *being reappointed.*

32 (f) Notwithstanding subdivision (e), a school district may deviate  
33 from the order of seniority in reappointing a certificated employee  
34 for either of the following reasons:

35 (1) The district demonstrates a specific need for personnel to  
36 teach a specific course or course of study, or to provide services  
37 authorized by a services credential with a specialization in either  
38 pupil personnel services or health for a school nurse, and the  
39 employee has special training and experience, and has demonstrated  
40 the competency necessary to teach in a specified grade level or

1 course of study, or to provide those services, which others with  
2 more seniority do not possess or are not able to provide.

3 (2) For purposes of maintaining or achieving compliance with  
4 constitutional requirements related to equal protection of the laws.

5 (g) During the period of the employee's preferred right to  
6 reappointment, the governing board of the district, if it is also the  
7 governing board of one or more other districts, may assign him or  
8 her to service, which he or she is certificated and competent to  
9 render, in the other district or districts. However, the compensation  
10 the employee receives may in the discretion of the governing board  
11 be the same as he or she would have received had he or she been  
12 serving in the district from which his or her services were  
13 terminated, and his or her service in the other district or districts  
14 shall be counted toward the period required for both state and local  
15 retirement, as defined by Section 22102, as though rendered in the  
16 district from which his or her services were terminated, and that  
17 a permanent employee in the other district or districts shall not be  
18 displaced by him or her.

19 It is the intent of this subsection that the employees of a school  
20 district, the governing board of which is also the governing board  
21 of one or more other school districts, shall not be at a disadvantage  
22 as compared with employees of a unified school district.

23 (h) At any time prior to the completion of one year after his or  
24 her return to service, he or she may continue or make up, with  
25 interest, his or her own contributions to a state or district retirement  
26 system, for the period of his or her absence, but it shall not be  
27 obligatory on the state or district to match the contributions.

28 (i) If the employee becomes disabled or reaches retirement age  
29 at any time before his or her return to service, he or she shall  
30 receive, in any state or district retirement system of which he or  
31 she was a member, all benefits to which he or she would have been  
32 entitled if the disability or retirement occurred at the time of his  
33 or her termination of service, plus any benefits he or she may have  
34 qualified for thereafter, as though still employed.

35 ~~SEC. 9.~~

36 *SEC. 11.* This act is an urgency statute necessary for the  
37 immediate preservation of the public peace, health, or safety within  
38 the meaning of Article IV of the Constitution and shall go into  
39 immediate effect. The facts constituting the necessity are:

- 1 In order to make the necessary statutory changes to implement
- 2 the Budget Act of 2010 at the earliest time possible, it is necessary
- 3 that this act take effect immediately.

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